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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 684 OF 2023

Kallappa Ningappa Tarale

Applicant (Orig.
.. Defendant No.4)

Versus

Shivling Virupaksh Tarale and Ors.

.. Respondents

.....

- Mr. Manoj A. Patil, Advocate for Applicant.
- Ms. Pallavi Karanjkar, Advocate i/by Mr. Sandeep Koregave, Advocate for Respondent No.1.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2024.

P.C.:

1. Heard Mr. Patil, learned Advocate for Applicant and Ms. Karanjkar, learned Advocate for Respondent No.1.

2. The impugned order dated 19.08.2021 passed in Regular Civil Suit No.118 of 2021 is filed in Application filed by the Plaintiffs' against the Defendants under Order XXI Rule 29 of the Code of Civil Procedure, 1908 (for short "**CPC**") seeking stay on the Execution of the decree passed in a previous Suit between the parties being Regular Civil Suit No.110 of 2000.

3. Mr. Patil, learned Advocate for the Applicant would inform the Court that the decree passed in Regular Civil Suit No.110 of 2000 was a compromise decree between the parties. That decree came to be passed on 05.01.2001. From 2001 until 2021, the compromise decree

was in place. However for the first time in the year 2021, the Plaintiffs being aggrieved with the said compromise decree filed a fresh Civil Suit for declaration and injunction in respect of the properties which were contained and subject matter of the compromise decree.

4. Plaintiffs filed an Application under Order XXI Rule 29 of the CPC which *prima facie* would be impermissible in law. That Application in the fresh Suit for declaration and injunction filed by the Plaintiffs came to be allowed and the Execution proceedings came to be stayed.

5. Mr. Patil has drawn my attention to the reasons given in the impugned order wherein infact the learned Trial Court has itself opined that Order XXI Rule 29 of the CPC would have no Application in the present Suit proceedings for granting stay of the Execution proceedings with respect to the compromise decree. However, the learned Trial Court has invoked the powers under Section 151 of the CPC to stay the Execution on the ground that the majesty of Court is in question. I am not inclined to accept the reasons returned by the learned Trial Court in paragraph No.27 of the impugned order. They are untenable in allowing a challenge under Order XXI Rule 29 of the CPC in a Regular Civil Suit proceeding.

6. In view of the aforesaid facts, Respondent No.1 represented by Ms. Karanjkar is directed to take appropriate instructions and

inform the Court since she would submit that she has received instructions only today morning to appear in the present Writ Petition.

7. I am inclined to stay the impugned order, but at the profused request of Ms. Karanjkar, I am deferring the order since she has no instructions whatsoever from the Respondent No.1 for whom she is appearing.

8. Stand over to **07th February, 2024.**

[MILIND N. JADHAV, J.]

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